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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 RICHARD GREEN, an individual; AIR
12 PATENTS LLC, a California limited liability
13 company; and MEDICAL VISIONS, INC., a
California Corporation,

14 Plaintiffs,

15 vs.

16 AILNH, LLC,

17 Defendant.

18 AILNH, LLC,

19 Counter-Claimant

20 vs.

21 RICHARD GREEN, an individual; AIR
22 PATENTS LLC, a California limited liability
company; and MEDICAL VISIONS, INC., a
California Corporation,

23 Counter-Defendant
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Case No. 2:18-cv-10797-SVW-SK

*Assigned for all purposes to
Hon. Stephen V. Wilson*

**STIPULATED PROTECTIVE
ORDER**

Compl. Filed: October 11, 2018

FAC Filed: March 14, 2019

1 **STIPULATION**

2 IT IS HEREBY STIPULATED pursuant to Fed. R. Civ. P. 26(c) by and
3 between Plaintiffs and Counter-Defendant Richard Green, Air Patents LLC, and
4 Medical Visions, Inc. (collectively, “Plaintiffs”) and Defendant and Counter-Claimant
5 AILNH, LLC (“Defendant”) on the other hand, through their respective attorneys of
6 record, that a Protective Order (“Order” or “Stipulated Protective Order”) may be
7 entered by the Court in this action as follows:

8 **1. PURPOSES AND LIMITATIONS**

9 Plaintiffs and Defendant acknowledge that disclosure and discovery activity in
10 this litigation will involve production of confidential, proprietary, trade secret,
11 medical, psychological, personal or private information for which special protection
12 from public dissemination or disclosure (and from use for any purpose other than
13 prosecuting and defending this matter) would be warranted. Pursuant to Fed. R. Civ.
14 P. 26(c), Local Rule 79-5, and any other applicable local laws and rules, the Parties
15 wish to facilitate the orderly and efficient disclosure of relevant information, and to
16 minimize the potential for unauthorized disclosure of confidential information.

17 The Parties acknowledge that any use of information or items deemed
18 “Protected Material” pursuant to this Stipulated Protective Order at trial or in other
19 court hearings or proceedings shall be governed exclusively by the orders of the
20 presiding judge. The Parties further acknowledge that the terms of this Stipulated
21 Protective Order do not apply to or operate to constrain in any way the Court or the
22 Court’s personnel, who are subject only to the Court’s internal procedures regarding
23 the handling of any material filed or lodged with the Court, including, without
24 limitation, material filed or lodged under seal. The Parties also acknowledge that this
25 Order does not confer blanket protections on all disclosures or responses to discovery
26 and that the protection it affords extends only to the limited information or items
27 deemed “Protected Material” as that term is defined below.

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Counsel for Plaintiffs and Defendant have conferred on the issue of disclosure of certain information relevant to the claims and defenses in the above-captioned action. Plaintiffs and Defendant have agreed that both sides either have propounded or will propound discovery seeking information and documents related to, *inter alia*, confidential, proprietary, trade secret, personal or private information. Good cause exists pursuant to Federal Rule of Civil Procedure 26(c) to protect those involved in this litigation from the disclosure of such information without adequate safeguards in place regarding confidentiality.

2. DEFINITIONS

2.1 Party. Plaintiffs and Defendant, including his/its officers, directors, employees, Experts or Consultants (as defined below) and outside counsel (as defined below).

2.2 Disclosure or Discovery Material. All items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced or generated in disclosures, responses to discovery or other requests for documentation in this matter.

2.3 Competitor. “Competitor” means any manufacturer of, or any entity involved in the sale of, medical devices and any person who, upon reasonable and good faith inquiry, could be determined to be employed by, to be a consultant doing research for, or otherwise to be retained by any manufacturer of, or any entity involved in the sale of, medical devices.

2.4 “CONFIDENTIAL” Information or Items. Any hardcopy or electronic document, information, testimony (*i.e.*, depositions, declarations, or other pre-trial statements in this Litigation), and all copies, data, extracts, compilations, summaries, reports, and information obtained, derived, or generated from such material that the party designating the material as confidential reasonably believes to be entitled to confidential treatment under Federal Rule of Civil Procedure 26(c)(1)(G), Local Rule 79-5, or other applicable laws or regulations. Confidential

1 material includes, but is not limited to, trade secrets (as defined in the Uniform Trade
2 Secrets Act); other confidential or proprietary research, development, or commercial
3 information; all information that, if disclosed, could result in competitive, commercial,
4 or business harm; and any person's personal identifying information, financial
5 information, medical/insurance information, or other information that is private under
6 applicable laws or regulations.

7 **2.5 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”**
8 **Information or Items.** Extremely sensitive information that the Disclosing Party
9 considers in good faith to contain or comprise information covered by paragraph 2.4
10 above, but that is so highly sensitive or confidential that disclosure to a Party would
11 pose a substantial risk of impairing the personal, business or commercial interests of
12 the Designating Party or others subject to Rule 26(c) or under other applicable laws,
13 including, but not limited to, information relating to changes and/or improvements
14 made to the Device after the Asset Purchase Agreement,¹ testing and/or evaluations
15 relating to the revised/improved device, potential uses of the Device, and AINLH's
16 potential licensees.

17 **2.6 Producing Party.** A Party that produces Disclosure or Discovery
18 Material in this case.

19 **2.7 Receiving Party.** A Party that receives Disclosure or Discovery Material
20 from a Producing Party.

21 **2.8 Designating Party.** A Party that designates information or items that it
22 produces in disclosures or in responses to discovery or otherwise as
23 “CONFIDENTIAL” Information or Items or “HIGHLY CONFIDENTIAL-
24 ATTORNEYS’ EYES ONLY” Information or Items.

25 **2.9 Challenging Party.** A Party that challenges the designation of
26 information or items under this Stipulated Protective Order.

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28 ¹ The Parties incorporate the meaning set forth in the First Amended Complaint of the terms “Device” and “Asset Purchase Agreement.”

1 **2.10 Protected Material.** Any Disclosure or Discovery Material that is
2 designated as “CONFIDENTIAL” Information or Items or “HIGHLY
3 CONFIDENTIAL-ATTORNEYS’ EYES ONLY” Information or Items.

4 **2.11 Outside Counsel.** Attorneys who are not employees of a Party but who
5 are retained to represent or advise a Party in this action, including their employees and
6 independent companies or agencies that Outside Counsel directly retains on behalf of
7 a Party to perform litigation support services, including for example steno- or
8 videographic services.

9 **2.12 Expert or Consultant.** A person with specialized knowledge or
10 experience in a matter pertinent to the litigation who has been retained by a Party or
11 its counsel to serve as an expert or as a consultant in this action (regardless whether
12 the individual serves as a witness). This definition includes a professional jury or trial
13 consultant retained in connection with this litigation. An expert for purposes of this
14 Stipulated Protective Order shall not include anyone who is a past or current employee
15 of either an opposing Party or a Competitor.

16 **2.13 Professional Vendors.** Persons or entities that provide litigation support
17 services (e.g., photocopying; videotaping, translating; preparing exhibits or
18 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and
19 their employees and subcontractors.

20 **3. SCOPE**

21 The protections conferred by this Stipulated Protective Order cover not only
22 Protected Material (as defined above), but also any information copied or extracted
23 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus
24 testimony, conversations, or presentations by parties or counsel in this action or in
25 other settings that might reveal Protected Material. Nothing in this Order shall be
26 construed as requiring disclosure of documents, information or any other materials
27 that are subject to applicable privileges or immunities or that are, or may be claimed to
28 be, otherwise beyond the scope of permissible discovery. Nothing herein shall be

1 construed as an admission or concession by any party that any Protected Material
2 constitutes relevant, material, or admissible evidence in this matter.

3 **4. DURATION**

4 The parties to this Stipulated Protective Order intend that the protections
5 conferred by the designation of material as “Protected Material” shall apply to any
6 documents produced in this litigation so designated, regardless of whether or not this
7 Order has been entered by the Court. Further, the parties agree to “meet and confer”
8 in good faith after the conclusion of the subject litigation (if not before) to ensure that
9 “Protected Material” does not become part of the “public record.”

10 **5. DESIGNATING PROTECTED MATERIAL**

11 **5.1 Exercise of Restraint and Care in Designating Material for** 12 **Protection.**

13 Each Party that designates information or items for protection under this Order
14 must take care to limit any such designation to specific material that qualifies under
15 the appropriate standards, including, when reasonable, designating for protection only
16 those parts of material, documents, items, or oral or written communications which
17 qualify for protection under this Order.

18 If it comes to a Party’s attention that information or items that it designated for
19 protection do not qualify for protection at all, or do not qualify for the level of
20 protection initially asserted, that Party must promptly notify all other parties that it is
21 withdrawing the mistaken designation.

22 **5.2 Manner and Timing of Designations.**

23 Except as otherwise provided in this Order (*see, e.g.*, second paragraph of
24 section 5.2(a), below), or as otherwise stipulated or ordered, material that qualifies for
25 protection under this Order must be clearly so designated before the material is
26 disclosed or produced. This, however, does not preclude a Designating Party from
27 designating Protected Material previously produced in this action prior to the Parties’
28 entry of this Stipulated Protective Order.

1 Designation in conformity with this Order requires:

2 (a) **For information in documentary form** (apart from transcripts of
3 depositions or other pretrial or trial proceedings):

4 (i) Documents Produced in Image, PDF, or hardcopy form
5 (“Image”). The Designating Party shall place on each page the following legend:
6 CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER or HIGHLY
7 CONFIDENTIAL ATTORNEYS’ EYES ONLY, CONFIDENTIAL, SUBJECT TO
8 PROTECTIVE ORDER. The legend shall not obscure any content of the original
9 document. Any person making a copy of the image, if authorized under this Order,
10 shall ensure that the same legend shows on the copy.

11 (ii) Documents Produced in Native Format (“native file”). A
12 Designating Party shall rename each native file to include, at the end of the file name
13 and prior to the file extension, the following language: CONFIDENTIAL or HIGHLY
14 CONFIDENTIAL ATTORNEYS’ EYES ONLY. Any person making any copy of the
15 native file, if authorized under this Order, shall not rename the file.

16 (b) **For testimony given in deposition or in other pre-trial or trial**
17 **(litigation) proceedings:**

18 The Designating Party may designate information disclosed on the record at the
19 deposition, including testimony and exhibits, as “CONFIDENTIAL
20 INFORMATION” or “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY” and
21 request the preparation of a separate transcript of such material. Such separate
22 transcript shall include both deposition testimony and exhibits so designated. In
23 addition, deposition transcripts and exhibits shall be deemed confidential for thirty
24 (30) days after the Parties’ receipt of the final transcript. A Designating Party may
25 designate in writing, within thirty (30) days after receipt of any final deposition
26 transcript in the action, the specific pages of the transcript and exhibits to be treated as
27 “CONFIDENTIAL INFORMATION” OR “HIGHLY CONFIDENTIAL ATTORNEYS’
28 EYES ONLY.” The Designating Party shall then be responsible to notify the Court

1 Reporter and the Court Reporter shall provide a separate transcript which shall include
2 both deposition testimony and exhibits so designated.

3 Transcript pages containing Protected Material must be separately bound by the
4 court reporter, who must affix to the top of each such page the legend
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY,” as
6 instructed by the Party offering or sponsoring the witness or presenting the testimony.

7 (c) **Information Contained in Responses to Written Discovery:**

8 A Designating Party may designate information disclosed in response to written
9 discovery requests (including subpoenas) as “CONFIDENTIAL INFORMATION” or
10 “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY” by so indicating in said
11 responses, on each page of any documents produced with such responses, and/or as
12 otherwise provided in Paragraph 5.2 above, identifying those responses being so
13 designated. In addition, a Designating Party may designate in writing, within thirty
14 (30) days after receipt of another Party or non-party’s responses to written discovery
15 requests, the specific responses, documents, and/or other information to be treated as
16 “CONFIDENTIAL INFORMATION” or “HIGHLY CONFIDENTIAL ATTORNEYS’
17 EYES ONLY.”

18 **5.3 Protected Material Disclosed by a Non-Party.**

19 For 30 days after a non-party makes disclosures in this proceeding, the
20 entire disclosure shall be treated as Protected Material under this Order.

21 Within the 30-day period, the non-party or a Party in this action may
22 notify all other parties that all or specific portions of the disclosure are Protected
23 Material. Thereafter, the designated portions shall remain subject to this Order.

24 **5.4 Inadvertent Failure to Designate.**

25 An inadvertent failure to designate qualified information or items as
26 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY” does
27 not, standing alone, waive the Designating Party’s right to secure protection under this
28 Order for such material. If material is appropriately designated as

1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY” after
2 the material was initially produced, the Receiving Party, on notification of the
3 designation, must make reasonable efforts to assure that the material is treated in
4 accordance with the provisions of this Order.

5 **5.5 Challenges to Designations.**

6 A Party may challenge the propriety of any designation of any Discovery
7 Disclosure or Discovery Material made pursuant to this Order. The challenge shall be
8 made within three (3) court days of the Challenging Party’s receipt of the material to
9 be challenged. A challenge may be made by serving by e-mail on all other Parties (and
10 third parties, if applicable) a “Notice of Objection” that identifies with particularity
11 the Protected Material as to which the designation is challenged and states the basis
12 for each challenge.

13 (a) After any challenge is asserted to a designation made according to
14 the procedures set forth in paragraph 5.2 above and its various sub-paragraphs, the
15 Protected Material shall continue to have its designation until the challenge is fully
16 resolved according to the procedures set forth in this paragraph 5.5.

17 (b) Intentionally omitted.

18 (c) The Parties will strictly comply with Local Rule 37-1 and will
19 attempt to resolve each challenge in good faith before requesting judicial intervention.
20 The Parties must begin the process by conferring directly (in voice to voice dialogue;
21 other forms of communication are not sufficient) within three (3) court days of the
22 date of service of the Notice of Objection. In conferring, the Challenging Party must
23 explain the basis for its belief that the confidentiality designation was not proper and
24 must give the Designating Party and opportunity to review the designated material, to
25 reconsider the circumstances, and, if no change in designation is offered, to explain
26 the basis for the chosen designation.

27 (d) If the conference described in paragraph 5.5(c) does result in an
28 agreement regarding the subjects of the Notice of Objection, the Receiving Party may

1 file a motion objecting to the designation and seeking the Court's approval to re-
2 designate the identified information. Such a motion (either on regular notice or
3 through ex parte application) must be made in a manner that it will be fully briefed no
4 later than thirty (30) days prior to the trial date. In seeking judicial intervention, the
5 Parties will strictly comply with Local Rules 37-2 and 79-5, including, specifically,
6 Local Rule 79-5.2.2. The Designating Party shall bear the burden of establishing that
7 it properly designated the Protected Material within the meaning of this Protective
8 Order or that the information is otherwise deserving of an alternative designation.

9 If such a motion is timely filed, the original designation shall remain effective
10 until service of notice of entry of an order re-designating the materials.

11 **6. ACCESS TO AND USE OF PROTECTED MATERIAL**

12 **6.1 Basic Principles.**

13 A Receiving Party may use Protected Material only for purposes of prosecuting
14 and defending this action. Such Protected Material may be disclosed only to the Court
15 and its employees or other staff (e.g., externs) and to the categories of persons
16 described in this Stipulated Protective Order. When the litigation has been concluded,
17 a Receiving Party shall comply with the provisions of paragraphs 4, 8, 9 and 13.

18 **6.2 Pleadings, Motion Papers, and Written Discovery Papers.** The
19 Parties shall comply with all of the requirements contained in L.R. 79-5 prior to
20 including any material that another party has designated as Protected Material in
21 pleadings, motion papers (written motions, affidavits, and briefs), or written discovery
22 papers (requests and responses).

23 **6.3 Protected Material, including, without limitation, material**
24 **designated as "CONFIDENTIAL," May Be Disclosed Only to the Following**
25 **Qualified Persons:**

26 (a) All Parties in this Action (including his/its officers, directors, and
27 employees);

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1 (b) Outside Counsel as defined above, including counsel's partners,
2 employees, and agents (*e.g.*, outside copy services, litigation-support services, and
3 stenographers) retained in the Action;

4 (c) Experts or Consultants, as defined above, but only if: (1) the
5 Expert or Consultant has signed a copy of the Certification (Exhibit A), (2) is not a
6 Competitor of the Designating Party, and (3) Counsel for the Party retaining the
7 Expert or Consultant, after duly diligent inquiry, does not know of any instance in
8 which the Expert or Consultant has been found to be in violation of the terms of a
9 protective order in any legal proceeding;

10 (d) A witness at a deposition or pre-trial hearing, if the witness will
11 give relevant testimony regarding the Protected Material to be disclosed or if
12 disclosure is necessary to prepare the witness for the testimony, and only after the
13 witness has signed a copy of the Certification;

14 (i) This provision does not preclude the Designating Party from
15 objecting to or moving to preclude disclosure to any witness, or from seeking
16 amendment of this provision in the future;

17 (e) Any person identified as an author, source, addressee, or recipient
18 of the material or who already has a copy of the "CONFIDENTIAL" Information,
19 provided such persons may not retain any "CONFIDENTIAL" Information shown to
20 them and only after execution of the Certification;

21 (f) Any other person mutually agreed upon among the Parties, but
22 only if that person has signed the Certification;

23 (g) Any mediators or arbitrators selected to assist in resolution of this
24 matter, and their personnel actively engaged in assisting them;

25 (h) The Court or any Court personnel, including any court reporters;
26 and,

27 (i) Any other person by written agreement of the Designating Party
28 and only after execution of the Certification.

1 **6.4 Information Designated as “HIGHLY CONFIDENTIAL -**
2 **ATTORNEYS’ EYES ONLY” May Be Disclosed Only to the Following Qualified**
3 **Persons:**

4 (a) Outside Counsel as defined above, including counsel’s partners,
5 employees, and agents (*e.g.*, outside copy services, litigation-support services, and
6 stenographers) retained in the Action;

7 (b) Experts or Consultants, as defined above, but only if: (1) the
8 Expert or Consultant has signed a copy of the Certification (Exhibit A), (2) is not a
9 Competitor of the designating Party, and (3) Counsel for the Party retaining the Expert
10 or Consultant, after duly diligent inquiry, does not know of any instance in which the
11 Expert or Consultant has been found to be in violation of the terms of a protective
12 order in any legal proceeding;

13 (c) Any person identified as an author, source, addressee, or recipient
14 of the material or who already has a copy of the “HIGHLY CONFIDENTIAL -
15 ATTORNEYS’ EYES ONLY” Information, provided such persons may not retain any
16 “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” Information shown to
17 them and only after execution of the Certification;

18 (d) Any mediators or arbitrators selected to assist in resolution of this
19 matter, and their personnel actively engaged in assisting them;

20 (e) The Court or any Court personnel, including any court reporters;

21 (f) A witness at a deposition or pre-trial hearing, if the witness will
22 give relevant testimony regarding the Highly Confidential - Attorneys’ Eyes Only
23 Information to be disclosed or if disclosure is necessary to prepare the witness for the
24 testimony, and only after the witness has signed a copy of the Certification; and

25 (g) Any other person by written agreement of the Designating Party
26 and only after execution of the Certification.

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1 **6.5 Required Handling of Protected Material.**

2 (a) Protected Material shall not be disclosed to anyone for any purpose other
3 than as required for the preparation of trial or any appeal in this action, and, in that
4 limited context, shall be disclosed only to Qualified Persons as set out below.
5 Protected Material shall not be used for any business, competitive or other non-
6 litigation purpose.

7 (i) Protected Material in native format may be copied solely (a) for
8 use in a litigation-support application or (b) as mutually agreed upon by the parties.

9 (b) Each Party and its counsel, and each Qualified Person identified in
10 paragraphs 6.3 and 6.4 (other than the Court), including any person or entity acting on
11 behalf of, or for the benefit of, that Qualified Person, (i) shall not permit or enable
12 unauthorized dissemination of Protected Material to anyone; (ii) shall take all
13 necessary and prudent measures to preserve the security of Protected Material,
14 including measures to minimize risks of hacking of, and other unauthorized access to,
15 systems on which Protected Material is stored or through which it is transmitted; and
16 (iii) shall physically store, maintain, and transmit Protected Material solely within the
17 United States.

18 (c) If Protected Material is disclosed in a manner not authorized by this
19 Order, or if an attempt is made to hack or otherwise gain unauthorized access to a
20 system containing Protected Material (jointly, “unauthorized actions”), each Party or
21 Qualified Person with knowledge of the unauthorized actions immediately shall take
22 necessary and prudent remedial measures to prevent their reoccurrence and promptly
23 shall inform the Designating Party of such remedial measures and of all facts relating
24 to the unauthorized actions, including identification of all Protected Material
25 disclosed.

26 (d) Nothing in this Order shall limit any Designating Party’s use of its own
27 documents, including disclosure of its own Protected Material to any person for any
28 purpose.

1 **7. REDACTIONS**

2 Prior to any discovery-related disclosure or production, the Producing Party
3 may redact information or material that is protected from disclosure by applicable
4 privilege or immunity, that is governed by any applicable privacy law or regulation,
5 that contains commercially sensitive or proprietary non-responsive information, or
6 that any Order entered in this Action allows to be redacted. The Producing Party also
7 may withhold entire non-responsive attachments in a document family and may
8 produce slipsheets in their place.

9 **7.1 Methods of Redaction.**

10 (a) Each redaction in a TIFF-image shall be indicated clearly on the
11 image as being based on “Privilege” or “Other.”

12 (b) For native files requiring redaction, redacted text shall be replaced
13 with the terms “Privilege” or “Other,” and the Producing Party shall produce the
14 redacted file either in native format or in an authorized TIFF-image format.

15 (c) For metadata fields requiring redaction, field content shall be
16 replaced by the term “Redacted,” and the modified field shall be included in any
17 required .dat file.

18 (d) The terms of paragraph 5.4 above shall apply to any unintentional
19 failure to redact information.

20 **8. DESIGNATING PARTY’S USE OF OWN DOCUMENTS**

21 Nothing in this Order shall limit any Designating Party’s use of its own
22 documents and information, including Protected Material, in this action or otherwise.
23 Such disclosure shall not affect any designations made pursuant to the terms of this
24 Order so long as the disclosure is made in a manner that is reasonably calculated to
25 maintain the confidentiality of the information.

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1 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
2 **IN OTHER LITIGATION**

3 If a Receiving Party is served with a subpoena or an order issued in other
4 litigation that would compel disclosure of any information or items designated in this
5 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES
6 ONLY,” the Receiving Party must so notify the Designating Party’s Outside Counsel
7 in writing sent by e-mail immediately and in no event more than seven business days
8 after receiving the subpoena or order. Such notification must include a copy of the
9 subpoena or court order, the identification of the Protected Material(s) which the
10 Receiving Party believes to be implicated by the subpoena or order, and must indicate
11 the basis or bases by which the Receiving Party believes that the identified documents
12 are subject to disclosure.

13 The Receiving Party must also immediately inform, in writing, the party
14 causing the subpoena or order to issue that some or all responsive material is subject
15 to this Protective Order. A copy of this Stipulated Protective Order shall be included
16 therewith.

17 The purpose of imposing these duties is to alert the interested parties to the
18 existence of this Protective Order and to afford the Designating Party in this case an
19 opportunity to protect its confidentiality interests in the court from which the
20 subpoena or order issued.

21 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

22 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
23 Protected Material to any person or in any circumstance not authorized under this
24 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
25 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
26 to recover all copies of the Protected Material, (c) inform the person or persons to
27 whom unauthorized disclosures were made of all the terms of this Order, and (d)

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1 request that such person or persons to return and/or destroy **all** copies of all materials
2 so disclosed and certify that such return and/or destruction has taken place.

3 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
4 **PROTECTED MATERIAL**

5 The production of information protected by the attorney-client privilege, work
6 product doctrine, or any other privilege or protection from disclosure is not a waiver
7 of the privilege or protection from discovery in this case or in any other federal or
8 state proceeding. If information is produced in discovery that is subject to a claim of
9 privilege or of protection as a trial-preparation material, the party making the claim
10 may notify any party that receiving such information of such claim and the basis for it.
11 After being notified, a Party must promptly return or destroy the specified information
12 and any copies it has and may not sequester, use or disclose the information until the
13 claim is resolved. When a Producing Party gives notice to Receiving Parties that
14 certain inadvertently produced material is subject to a claim of privilege or other
15 protection, the obligations of the Receiving Parties are those set forth in Federal Rule
16 of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever
17 procedure may be established in an e-discovery order that provides for productions
18 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e),
19 insofar as the parties reach an agreement on the effect of disclosure of a
20 communication or information covered by the attorney-client privilege or work
21 product protection, the parties may incorporate their agreement in the stipulated
22 protective order submitted to the court.

23 If the Receiving Party receives documents, ESI, or other forms of information
24 from the Producing Party that, upon inspection or review, appear in any respect to
25 contain or constitute potentially privileged information, the Receiving Party shall
26 immediately stop review of such information, shall not distribute it further even
27 amongst the Party's own case team except as strictly necessary to confirm the
28 privileged nature of its contents, promptly sequester the potentially privileged

1 information, and immediately identify the potentially privileged information to the
2 Producing Party.

3 The Receiving Party may object to the Producing Party's designation of
4 disclosed information as privileged material by providing written notice of such
5 objection within seven days of its receipt of a written demand for the return of the
6 disclosed privileged material. The Parties will strictly comply with Local Rules 37-1
7 and 37-2 in connection with any dispute regarding the designation of information as
8 privileged material. If the Parties are unable to resolve any such dispute, the issue
9 shall be resolved by the Court after an in camera review of the disclosed privileged
10 material. However, the Receiving Party agrees not to argue in connection with a
11 dispute over privileged material that the information may not have been reviewed by
12 the Producing Party prior to its disclosure or that the Producing Party did not take
13 reasonable steps to prevent disclosure. Pending resolution of any such dispute by the
14 Court, the Receiving Party shall not review and shall not use the disclosed privileged
15 material in any respect.

16 This Order shall be interpreted to provide the maximum protection allowed by
17 Federal Rule of Evidence ("FRE") 502(d). FRE 502(b) is inapplicable to any
18 disclosed privileged material. Under FRE 502(d) and 28 U.S. Code § 1738, this Order
19 shall be enforceable and granted full faith and credit in all other state and federal
20 proceedings. Any subsequent conflict of law analysis shall apply the law most
21 protective of privilege and work product.

22 Nothing contained herein is intended to or shall serve to limit a party's right to
23 conduct a review and segregation for withholding from production documents, ESI or
24 information (including metadata) on the basis of relevance or responsiveness to
25 discovery requests, or that is privileged material.

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27 //

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1 **12. MISCELLANEOUS**

2 **12.1 Right to Further Relief.**

3 All Parties reserve the right to seek modification of this Order at any time for
4 good cause, including obtaining appropriate orders for deponents who refuse to sign
5 the attached Certification (i.e. Exhibit A). The Parties agree to meet and confer prior
6 to seeking to modify this Order for any reason. The restrictions imposed by this Order
7 may only be modified or terminated by written stipulation of all Parties or by order of
8 Court. No Party shall be prejudiced in any way of its right to petition the Court for a
9 further protective order relating to any purportedly confidential information. Nothing
10 in this Order Shall prevent any Party from seeking additional Protective Orders or
11 other appropriate relief with respect to the scope of discovery and/or any discovery
12 requests, depositions, and/or portions thereof that such Party believes to be
13 inappropriate, harassing, or otherwise impermissible under applicable law.

14 **12.2 Right to Assert Other Objections.**

15 By stipulating to the entry of this Protective Order, no Party waives any right it
16 otherwise would have to object to disclosing or producing any information or item on
17 any ground not addressed in this Stipulated Protective Order. Similarly, no Party
18 waives any right to object, on any ground, to use in evidence of any Protected
19 Material.

20 **12.3 Filing Protected Material.**

21 Without written permission from the Designating Party or a court order secured
22 after appropriate notice to all interested persons, a Party may not file in the public
23 record in this action any Protected Material. A Party that seeks to file under seal any
24 Protected Material must comply with Civil Local Rule 79-5.2. In the event that a
25 Party's request to file Protected Material under seal is denied by the Court, then the
26 Receiving Party may file the information in the public record unless otherwise
27 instructed by the Court.

28 //

1 **13. COMPLIANCE WITH ORDER**

2 A Party's compliance with the obligations imposed on it by this Order,
3 including any obligations concerning the treatment of information designated as
4 "CONFIDENTIAL INFORMATION" or "HIGHLY CONFIDENTIAL ATTORNEYS'
5 EYES ONLY" shall not be deemed an admission by the complying Party or otherwise
6 be evidence that the information so designated is confidential, proprietary, trade
7 secret, or private information. Nor shall such compliance be deemed a waiver of the
8 complying Party's right to challenge the Designating Party's designation of Protected
9 Material as "CONFIDENTIAL INFORMATION" or "HIGHLY CONFIDENTIAL
10 ATTORNEYS' EYES ONLY."

11 **14. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
12 **IN OTHER LITIGATION**

13 If a Party is served with a subpoena or a court order issued in other litigation
14 that compels disclosure of any information or items designated in this action as
15 "CONFIDENTIAL," that Party must:

16 (a) promptly notify in writing the Designating Party. Such notification
17 shall include a copy of the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or
19 order to issue in the other litigation that some or all of the material covered by the
20 subpoena or order is subject to this Protective Order. Such notification shall include a
21 copy of this Stipulated Protective Order; and

22 (c) cooperate with respect to all reasonable procedures sought to be
23 pursued by the Designating Party whose Protected Material may be affected.

24 If the Designating Party timely seeks a protective order, the Party served with
25 the subpoena or court order shall not produce any information designated in this
26 action as "CONFIDENTIAL" before a determination by the court from which the
27 subpoena or order issued, unless the Party has obtained the Designating Party's
28 permission. The Designating Party shall bear the burden and expense of seeking

1 protection in that court of its confidential material – and nothing in these provisions
2 should be construed as authorizing or encouraging a Receiving Party in this action to
3 disobey a lawful directive from another court.

4 **15. FINAL DISPOSITION**

5 Unless otherwise ordered or agreed in writing by the Producing Party, within
6 thirty (30) days after the final termination of this litigation, each Receiving Party must
7 return all Protected Material to the Producing Party. As used in this subdivision, “all
8 Protected Material” includes all copies, abstracts, compilations, summaries or any
9 other form of reproducing or capturing any of the Protected Material. With
10 permission in writing from the Producing Party, the Receiving Party may destroy
11 some or all of the Protected Material instead of returning it. Whether the Protected
12 Material is returned or destroyed, the Receiving Party must submit a written
13 certification to the Producing Party (and, if not the same person or entity, to the
14 Designating Party) by the thirty day deadline that identifies (by category, where
15 appropriate) all the Protected Material that was returned or destroyed and that affirms
16 that the Receiving Party has not retained any copies, abstracts, compilations,
17 summaries or other forms of reproducing or capturing any of the Protected Material.
18 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
19 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney
20 work product, even if such materials contain Protected Material. Any such archival

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1 copies that contain or constitute Protected Material remain subject to the terms of this
2 Stipulated Protective Order.

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
4

5 DATED: June 4, 2019

BLANK ROME LLP

7 By: /s/ Jonathan A. Loeb

8 Greg Bordo

9 Jonathan A. Loeb

10 Ghazal Tajmiri

11 Julianna Simon

12 Attorneys for Defendant and Counterclaimant

13 AILNH, LLC

14 DATED: June 4, 2019

TESSER | GROSSMAN LLP

15 By: /s/

16 Brian M. Grossman

17 Gina Marie Simas

18 Attorneys for Plaintiffs and Counter-defendants

19 RICHARD GREEN, AIR PATENTS LLC

20 and MEDICAL VISIONS, INC.

21
22 FOR GOOD CAUSE SHOWN, it is SO ORDERED.

23
24 Date: July 8, 2019

By: 

25 Hon. Steve Kim

26 United States Magistrate Judge
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EXHIBIT A

Acknowledgment and Agreement to be Bound

I, _____ do solemnly swear that I am fully familiar with the terms of the Stipulated Protective Order entered in Green, et al. v. AILNH, LLC, United States District Court for the Central District of California, Civil Action No. 2:18-cv-10797-SVW-SK, and hereby agree to comply with and be bound by the terms and conditions of said Order unless and until modified by further Order of this Court. I hereby consent to the jurisdiction of said Court for purposes of enforcing this Order.

DATED: _____ By: _____

Name/Title: _____